IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(C).No. 37810 of 2004(A)

PETITIONER:

DR.P.ANIL KUMAR, S/O.M.P.BALAKRISHNA MENON, PRASADAM, KACHERIPARAMBIL, PUZHAKKATTIRI P.O. MALAPPURAM DISTRICT.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:
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1. **THE SALES TAX OFFICER, PERINTHALMANNA, MALAPPURAM DISTRICT.**

2. **THE DEPUTY TAHSILDAR, REVENUE RECOVERY, PERINTHALMANA, MALAPPURAM DISTRICT.**

BY GOVERNMENT PLEADER SRI. K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.37810/2004 A

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE RESIGNATION LETTER DTD. 25/02/1993 SUBMITTED BY THE PETITIONER BEFORE THE MANAGING DIRECTOR AND OTHER DIRECTORS.**

EXT.P2: **COPY OF THE EXECUTION PETITION DTD. 12/07/2004 IN E.P.NO.113/2004 IN O.S.NO.113/1999.**

EXT.P3: **COPY OF THE REVENUE RECOVERY NOTICE DTD. 18/12/2004 FROM THE 2ND RESPONDENT.**

EXT.P4: **COPY OF THE REPRESENTATION DTD. 24/12/2004 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**

/TRUE COPY/

P.A.TO JUDGE

KSS

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 37810 of 2004

Dated, this the 21st day of November, 2007

J U D G M E N T

Petitioner is challenging recovery proceedings for recovery of arrears of sales tax due from a company by name M/s. Malabar Herbal Products Pvt. Limited for the year 1999-2000. Petitioner's case is that though petitioner was a director of the company, petitioner resigned in May 1993. It is seen that the sale tax appeal filed against 1999-2000 assessment, the appellate authority exempted the petitioner, by accepting his contention that he has resigned from the Company in May 1993. Even though, writ petition is pending for the last three years, respondents have not cared to file any statement or counter affidavit in the Court. It is not known as to whether the other directors of the company against whom Section 26C proceedings of the KGST Act, can be initiated, if recovery is not possible for want of assets for the company. It is also clear from the order of the appellate authority that Bank had obtained a decree against the Company. Moreover, it is not known whether the appeal filed against the assessment for the year 2000-01 has become final. In any case, after retirement of petitioner, the company continued, which is clear from the fact that

assessments are made for the years 1998-99, 1999-2000, 2000-01, etc.

2. In the circumstances, this writ petition is disposed of directing the respondents to exempt the petitioner as revealed from the previous records that he resigned in May 1993, if the appeal filed against the assessment for the year 2000-2001 has become final, and proceed for recovery against other directors of the company in accordance with law after conducting enquiry and collecting information about their assets. It will be open to the respondents to proceed for recovery against the assets of the company also.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg